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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FEDERAL  
Office

In the Matter of

Implementation of the Local  
Competition Provisions in the  
Telecommunications Act of 1996

CC Docket No. 96-98

**COMMENTS OF BEEHIVE TELEPHONE COMPANY, INC.**

Beehive Telephone Company, Inc. ("Beehive"), by its attorney and pursuant to Section 1.415(a) of the Commission's Rules, hereby submits its comments in response to the Commission's *Notice of Proposed Rulemaking*, FCC 96-182 (Apr. 19, 1996) ("Notice") in the above-captioned proceeding. Beehive asks the Commission to rule that Section 251(e) of the Telecommunications Act of 1996 ("1996 Act") <sup>1/</sup> prohibits Database Service Management, Inc. ("DSMI") from administering the assignment of 800 numbers under the 800 Service Management System Functions Tariff ("SMS Tariff"). In support thereof, the following is respectfully submitted.

**Preliminary Statement**

1. Beehive is a small, independent local exchange carrier operating in seven Utah counties. One of the services offered by Beehive is access to 800 numbers. Accordingly, Beehive has a cognizable interest in the impartiality and cost of future 800 number administration.

2. Beehive is also a party to ongoing litigation involving the issue of whether DSMI can continue to exercise operational control over the 800 Service Management System ("SMS"), the

<sup>1/</sup> See 1996 Act, Pub. L. No. 104-104, § 101(a), § 251(e) (1996) (to be codified at 47 U.S.C. § 251(e)).

Noted for record  
UNITED STATES  
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computer-based system that manages the assignment and use of 800 numbers. <sup>2/</sup> Moreover, Beehive is defending a civil suit brought by DSMI alleging monies due for services rendered under the SMS Tariff. <sup>3/</sup> This litigation has provided Beehive with access to information relevant to the questions of whether DSMI is qualified to administer 800 numbers and whether the costs of such administration can be recovered under the SMS tariff.

### Discussion

#### **I. 800 Number Administration And Cost Recovery Must Be Addressed In This Proceeding**

3. The Commission stated that it would address "toll free number administration" in its rulemaking in CC Docket 95-155 <sup>4/</sup>, and that it would not address the issue of how the costs of 800 number administration should be recovered. See Notice, slip op. at 88 (para. 253), 90 (para. 259). Beehive suggests that the Commission should consider both matters in this proceeding.

4. Comments were elicited in Docket 95-155 in October 1995, well before the 1996 Act was enacted. Accordingly, commenters did not have the opportunity to address whether DSMI qualified as the "impartial" administrator required by Section 251(e)(1) of the 1996

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<sup>2/</sup> See *Beehive Telephone, Inc. v. The Bell Operating Companies*, 10 FCC Rcd 10562 (1995), petition for review filed, *Beehive Telephone, Inc. v. FCC*, No. 95-1479 (D.C. Cir. filed Sept. 15, 1995) (motion for remand pending).

<sup>3/</sup> See *Database Service Management, Inc. v. Beehive Telephone Co., Inc.*, No. 2:96CV 0188C (D. Utah filed Mar. 6, 1996).

<sup>4/</sup> See *Toll Free Service Access Codes*, 10 FCC Rcd 13692 (1995) ("Toll Free NPRM").

Act. That issue must be decided in this proceeding if the Commission is to fulfill its obligation to promulgate regulations to implement Section 251(e)(1).

5. The same is true with respect to the issue of how the costs of 800 number administration can be recovered as required by Section 251(e)(2) of the 1996 Act. Contrary to the Commission's view, that issue was not decided in CC Docket No. 92-237. <sup>5/</sup> That proceeding only addressed the administration of the North American Numbering Plan ("NANP"). 800 numbers are not administered under the NANP. See Notice, slip op. at 88 (para. 253).

## **II. DDMI Is Not An Impartial Entity**

6. The transmission of 800 toll free calls constitutes "telecommunications" as defined by the 1996 Act. <sup>6/</sup> Consequently, the assignment of 800 numbers constitutes "telecommunications numbering" under Section 251(e)(1). Therefore, the Commission must designate an "impartial" entity to be the 800 number administrator and to assign 800 numbers on an "equitable" basis. <sup>7/</sup>

7. The common meaning of "impartial" is "not partial or biased; fair, just." <sup>8/</sup> The Commission has decided that to be "fair and impartial", an administrator "should be a non-governmental

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<sup>5/</sup> See *Administration of the North American Numbering Plan*, 11 FCC Rcd 2588 (1995) ("NANP Order").

<sup>6/</sup> See 1996 Act, § 3(48) (to be codified at 47 U.S.C. § 153(43)).

<sup>7/</sup> See *id.* at § 251(e)(1).

<sup>8/</sup> *The Random House Dictionary of the English Language*, 959 (2d ed. 1987).

entity that it is not aligned with any particular telecommunications industry segment." <sup>9/</sup> DSMI does not qualify as the 800 number administrator under that standard.

8. DSMI is a wholly-owned subsidiary of Bell Communications Research, Inc., which is itself jointly owned by the seven Bell Operating Companies ("BOCs"). The BOC's maintain that they control DSMI. <sup>10/</sup> And the Commission has concluded, over Beehive's objection, that the BOCs are the "real parties in interest" with respect to the SMS. <sup>11/</sup> For its part, DSMI maintains in court papers that it acts as an agent for the BOCs. Obviously, therefore, DSMI is "aligned" with the BOCs, which comprise a dominant segment of the telecommunications industry.

9. Beehive submits that DSMI is not perceived as "impartial" by the telecommunications industry, and that DSMI is unlikely to be considered "impartial" within the meaning of Section 251(e)(1). Primarily for these reasons, Beehive suggests that an unaligned entity be created or designated by the Commission to be the 800 number administrator.

**III. The Costs Of The 800 Number  
Administrator Cannot Be  
Recovered Under The SMS Tariff**

10. Currently, the costs of administering and assigning 800 numbers are recovered from Responsible Organizations ("RespOrgs")

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<sup>9/</sup> NANP Order, slip op. at 26 (para. 57).

<sup>10/</sup> See Letter of Paul Walters to William F. Caton, File No. E-94-97, at 2-3 (Apr. 20, 1995).

<sup>11/</sup> Beehive, 10 FCC Rcd at 10568.

under the SMS Tariff and from the owners of service control points ("SCPs") under contract. <sup>12/</sup> That arrangement should not survive the enactment of the 1996 Act.

11. Section 251(e)(2) of the 1996 Act provides that the costs of administering the assignment of 800 numbers and 800 number portability "shall be borne by all telecommunications carriers on a competitively neutral basis." <sup>13/</sup> However, those costs are not being borne just by telecommunications carriers, and they are not borne on a "competitively neutral" basis.

12. Entities that are not telecommunications carriers (such as Westinghouse) are among the RespOrgs that are bearing the costs of 800 number administration. <sup>14/</sup> Moreover, those costs are being borne by RespOrgs and SCP owners in an inherently discriminatory basis. RespOrgs are charged under the SMS Tariff, while SCP owners may negotiate the rates they will pay for SMS access. <sup>15/</sup>

13. To comply with Section 251(e)(2), the costs of 800 number administration and portability should be borne as are NPRM administrative costs. Beehive respectfully suggests that the Commission direct that the costs of 800 number administration be recovered through contributions by all 800 telecommunications providers based

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<sup>12/</sup> See *Beehive*, 10 FCC Rcd at 10562.

<sup>13/</sup> 1996 Act, § 101 § 251(e)(2).

<sup>14/</sup> See *Toll Free NPRM*, slip op. at 6 n.16.

<sup>15/</sup> See *Beehive*, 10 FCC Rcd at 10566-67.

upon the gross revenues of each provider. 16/

Respectfully submitted,

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By   
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May 20, 1996

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16/ See NANP Order, slip op. at 40-42. See also Notice, slip op. at 90 (para. 259).

**CERTIFICATE OF SERVICE**

I, Katherine A. Baer, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 20th day of May, 1996, sent by first class United States mail, copies of the foregoing COMMENTS to the following:

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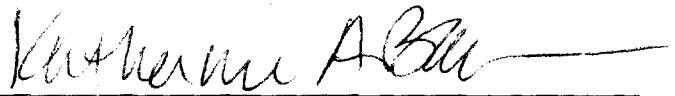
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A handwritten signature in cursive script, reading "Katherine A. Baer", followed by a horizontal line.

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